

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY)	
AVERAGE WHOLESALE PRICE)	
LITIGATION)	
)	MDL No. 1456
THIS DOCUMENT RELATES TO:)	
)	Civil Action No. 01-12257-PBS
<i>United States of America ex rel. Ven-a-Care of</i>)	
<i>the Florida Keys, Inc. v. Dey, Inc., et al., Civil</i>)	
Action No. 05-11084-PBS; and)	Hon. Patti B. Saris
)	
<i>United States of America ex rel. Ven-a-Care of</i>)	
<i>the Florida Keys, Inc. v. Boehringer</i>)	
<i>Ingelheim Corp., et al., Civil Action No.</i>)	
07-10248-PBS)	

**UNITED STATES' EXPEDITED MOTION TO STRIKE THE DEY DEFENDANTS'
EXHIBIT AND WITNESS LISTS FOR FAILURE TO COMPLY WITH
RULE 26 (a)(3)(A) OF THE FEDERAL RULES OF CIVIL PROCEDURE**

The United States hereby moves to strike the exhibit and witness lists filed by the Dey defendants on March 16, 2010, as well as the designations of deposition testimony served on the same date. As set forth more fully in the accompanying Memorandum, it is clear that Dey has failed to comply with Rule 26's directive regarding pretrial disclosures by narrowing the evidence and witnesses it intends to use at trial. Dey listed over 7,400 exhibits, characterized all but two of its 65 live witnesses as "may call," and designated more than 12,000 deposition citations from testimony of an additional 132 witnesses.

WHEREFORE the United States requests that the Court grant this Motion and strike the lists, ordering Dey to comply with Rule 26, and to cull its "may call" witness list. The Court also should amend the pretrial schedule to provide that the United States has fifteen days after Dey serves new compliant lists to respond. With respect to the exhibit list, the Court may wish to

simply limit Dey to the 254 exhibits Dey listed as ones it expects to use at trial, and strike the remainder of its list.

Respectfully submitted,

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CERTIFICATION

The undersigned certifies pursuant to LR 7.1(A)(2) that counsel have conferred concerning the above motion.

/s/ George B. Henderson, II
George B. Henderson, II

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused an electronic copy of the above document to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ George B. Henderson, II
George B. Henderson, II
Assistant U.S. Attorney

Dated: March 23, 2010